

## 16A C.J.S. Constitutional Law § 786

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### a. In General

## § 786. Interstate travel

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### West's Key Number Digest

West's Key Number Digest, Constitutional Law  1280

**The right of interstate travel is a basic or fundamental right recognized and guaranteed by the Constitution.**

The right of interstate travel is a basic or fundamental right recognized and guaranteed by the United States Constitution<sup>1</sup> and is virtually unqualified.<sup>2</sup> The right to travel is constitutionally protected against private as well as public encroachment.<sup>3</sup>

Although the right to travel is not expressly contained in the United States Constitution, it has been recognized as a basic elementary right emanating from the creation of the federal union<sup>4</sup> and as an inherent component of a free society.<sup>5</sup> It has been found in the privileges and immunities,<sup>6</sup> due process,<sup>7</sup> equal protection, and commerce clauses;<sup>8</sup> in the First Amendment;<sup>9</sup> and in some state constitutions.<sup>10</sup>

The constitutional right to travel embraces at least three different components: (1) it protects the right of a citizen of one state to enter and to leave another state; (2) it protects the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state; and (3) for those travelers who elect to become permanent residents, it protects the right to be treated like other citizens of that state.<sup>11</sup> Thus, the right includes freedom to enter and abide in any state in the union<sup>12</sup> and insures new residents the same right to vital government benefits and privileges in the states to which they migrate as are enjoyed by other residents.<sup>13</sup> Hence, the purpose of inhibiting migration into a state is constitutionally impermissible.<sup>14</sup> For instance, a state may no more try to fence out those indigents who seek better public medical facilities than it may fence out indigents generally<sup>15</sup> and may not render nonresidents of the state ineligible for Medicaid benefits at a private facility within the state.<sup>16</sup>

For a regulation merely to have an effect on travel is not sufficient to raise an issue of constitutional dimension,<sup>17</sup> and an otherwise constitutional law that incidentally discourages migration is not necessarily rendered suspect or invalid merely because of its incidental effect on the right to travel.<sup>18</sup> Rather, the right is implicated when a statute actually deters travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize an exercise of that right.<sup>19</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

United States citizens who were placed on screening list in federal terrorism database failed to state substantive due process claim based on fundamental right to travel; even if citizens were inconvenienced by secondary inspections, prolonged searches, and travel delays at airports, such did not constitute significant interference with freedom of movement. U.S. Const. Amend. 5. *Kovac v. Wray*, 363 F. Supp. 3d 721 (N.D. Tex. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); *Selevan v. New York Thruway Authority*, 584 F.3d 82 (2d Cir. 2009); *League of United Latin American Citizens v. Bredeisen*, 500 F.3d 523 (6th Cir. 2007).  
Idaho—*In re Bermudes*, 141 Idaho 157, 106 P.3d 1123 (2005).  
Iowa—*State v. Willard*, 756 N.W.2d 207 (Iowa 2008).  
Kan.—*State v. Hershberger*, 27 Kan. App. 2d 485, 5 P.3d 1004 (2000).  
Mont.—*Hood v. Hood*, 2012 MT 158, 365 Mont. 442, 282 P.3d 671 (2012).  
N.J.—*In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly*, 210 N.J. 29, 40 A.3d 684 (2012).  
Wash.—*Katare v. Katare*, 175 Wash. 2d 23, 283 P.3d 546 (2012), cert. denied, 133 S. Ct. 889, 184 L. Ed. 2d 661 (2013).
- 2 U.S.—*Califano v. Gautier Torres*, 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978); *Eunique v. Powell*, 302 F.3d 971 (9th Cir. 2002).
- 3 U.S.—*Volunteer Medical Clinic, Inc. v. Operation Rescue*, 948 F.2d 218 (6th Cir. 1991).  
Pa.—*Wert v. Com., Dept. of Transp.*, 821 A.2d 182 (Pa. Commw. Ct. 2003).
- 4 Cal.—*Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145 (1995).  
Minn.—*LaChapelle v. Mitten*, 607 N.W.2d 151 (Minn. Ct. App. 2000).

- 5 N.Y.—Aumick v. Bane, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).  
Cal.—Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).
- 6 U.S.—Bethesda Lutheran Homes and Services, Inc. v. Leean, 122 F.3d 443 (7th Cir. 1997).  
Cal.—Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).
- 7 U.S.—Callaway v. Samson, 193 F. Supp. 2d 783 (D.N.J. 2002).
- 8 U.S.—Bethesda Lutheran Homes and Services, Inc. v. Leean, 122 F.3d 443 (7th Cir. 1997).
- 9 Wash.—Spence v. Kaminski, 103 Wash. App. 325, 12 P.3d 1030 (Div. 3 2000), publication ordered, (Nov. 21, 2000).
- 10 U.S.—Pencak v. Concealed Weapon Licensing Bd. for County of St. Clair, 872 F. Supp. 410 (E.D. Mich. 1994).  
Alaska—Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264 (Alaska 1984).  
Cal.—In re Marriage of Fingert, 221 Cal. App. 3d 1575, 271 Cal. Rptr. 389 (2d Dist. 1990).  
N.Y.—City of New York v. Andrews, 186 Misc. 2d 533, 719 N.Y.S.2d 442 (Sup 2000).  
Wis.—County of Fond du Lac v. Derksen, 2002 WI App 160, 256 Wis. 2d 490, 647 N.W.2d 922 (Ct. App. 2002).  
Wyo.—Watt v. Watt, 971 P.2d 608 (Wyo. 1999) (overruled on other grounds by, Arnott v. Arnott, 2012 WY 167, 293 P.3d 440 (Wyo. 2012)).  
**Greater protection under state constitution**  
N.H.—Tomasko v. Dubuc, 145 N.H. 169, 761 A.2d 407 (2000).
- 11 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); Michael C. ex rel. Stephen C. v. Radnor Tp. School Dist., 202 F.3d 642, 141 Ed. Law Rep. 495 (3d Cir. 2000); Chavez v. Illinois State Police, 251 F.3d 612, 49 Fed. R. Serv. 3d 1127 (7th Cir. 2001); Walsh v. City and County of Honolulu, 423 F. Supp. 2d 1094 (D. Haw. 2006).  
Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).  
Tex.—Rooms With a View, Inc. v. Private Nat. Mortg. Ass'n, Inc., 7 S.W.3d 840 (Tex. App. Austin 1999).
- 12 U.S.—Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).  
Minn.—LaChapelle v. Mitten, 607 N.W.2d 151 (Minn. Ct. App. 2000).  
**Freedom to migrate from one state to another**  
Wis.—Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).  
**Freedom to migrate, resettle, and find new job**  
Md.—Braun v. Headley, 131 Md. App. 588, 750 A.2d 624 (2000).
- 13 U.S.—Califano v. Gautier Torres, 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978).
- 14 U.S.—Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).  
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- 15 U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974).
- 16 U.S.—Bethesda Lutheran Homes and Services, Inc. v. Leean, 122 F.3d 443 (7th Cir. 1997).
- 17 U.S.—Soto-Lopez v. New York City Civil Service Com'n, 755 F.2d 266 (2d Cir. 1985), judgment aff'd, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).
- 18 U.S.—Michael C. ex rel. Stephen C. v. Radnor Tp. School Dist., 202 F.3d 642, 141 Ed. Law Rep. 495 (3d Cir. 2000).

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